

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5
AMEND ARTICLE 6, SECTION 1233

SAFETY COMPLIANCE RATINGS (CHP-R-11-03)

Section 2402 California Vehicle Code (CVC) authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Sections 34501 and 34501.5 CVC allow the CHP to adopt reasonable rules and regulations that, in the judgment of the CHP, are designed to promote the safe operation of vehicles described in Section 34500 CVC including, but not limited to, controlled substances and alcohol testing of drivers by motor carriers, hours of service of drivers, equipment, fuel containers, fuel operations, inspection, maintenance, record keeping, accident reports and drawbridges. The adopted regulations are contained in Title 13, California Code of Regulations (13 CCR).

Section 34501(a)(4) CVC authorizes the CHP to inspect any vehicles in maintenance facilities or terminals, as well as any records relating to the dispatch of vehicles or drivers, and the pay of drivers, to assure compliance with the code and regulations adopted pursuant to that section. Section 34520 CVC requires motor carriers and drivers to comply with the controlled substances and alcohol use, transportation, and testing requirements of Parts 382 and 655 and Sections 392.5(a)(1) and 392.5(a)(3) of Title 49 of the Code of Federal Regulations. Section 34520 CVC also requires a motor carrier to make available for inspection, upon request of an authorized employee of the CHP, copies of all results and other records pertaining to the controlled substances and alcohol testing requirements.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law in Sections 34505.1, 34505.6, and 34505.7 CVC in part, requires the CHP to recommend that the Department of Motor Vehicles, Public Utilities Commission, or the Federal Motor Carrier Safety Administration suspend, revoke, deny, or take other administrative actions against a motor carrier's permit or operating authority, as appropriate, when a motor carrier has failed to comply with statute or regulation relative to motor carrier safety. Specifically, a recommendation shall be forwarded when a motor carrier fails to maintain any vehicle in a safe operating condition or to comply with the California Vehicle Code or with applicable regulations contained in 13 CCR, and, in the opinion of the Department, that failure presents an imminent danger to public safety or constitutes a consistent failure to comply. Currently the CHP defines the terms "imminent danger" and "consistent failure" as used in Sections 34505.1, 34505.6, 34505.7, and 34623 CVC in CHP policy. The term "consistent failure" is also defined in Sections 34505.1, 34505.6, 34505.7, and 34623 CVC specifically, as it relates to compliance with Section 1808.1, CVC.

The CHP proposes to amend 13 CCR, Division 2, Chapter 6.5, Article 6, Section 1233, in order to codify the departmental “opinion” regarding a determination of “imminent danger” or “consistent failure,” for the purpose of initiating civil, administrative, or criminal action pursuant to Section 34505.1, 34505.6, 34505.7, or 34623 CVC.

PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 322-3154, by email to cvsregs@chp.ca.gov, or by writing to:

CHP, Enforcement and Planning Division
Commercial Vehicle Section
ATTN: Mr. David Huizar
P. O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 4:45 PM, on August 8, 2011.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section, no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 322-3154 or by calling the CHP, Commercial Vehicle Section, at (916) 843-3400. All requests for information should include the following information: the title of the rulemaking package, the requester’s name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the requestors information is incomplete or illegible.

The rulemaking file is available for inspection at the CHP, Commercial Vehicle Section, 601 North 7th Street, Sacramento, California 95811. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our web site at www.chp.ca.gov/regulations.

Once prepared, any person desiring a copy of the adopted text and a final statement of reasons may request them at the above noted address or by visiting the above outlined web site.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations, or questions regarding the substance of the proposed regulations should be directed to Mr. David Huizar or Mr. Cullen Sisskind, CHP, Commercial Vehicle Section, at (916) 843-3400.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or non-substantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Government Code Sections 17500-17630 require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The CHP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

The CHP has determined that the proposed regulatory action has no effect on small businesses. Because the action is intended to adopt departmental opinion with regard to consistent failure and imminent danger, no small business will be required to comply with or enforce new regulations, nor will any small business in compliance with applicable safety requirements derive a benefit or incur a detriment.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CHP must determine that no reasonable alternative considered by the CHP, or that has otherwise been identified and brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The CHP invites interested parties to present statements or arguments with

respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Sections 2402, 31401, 34501, 34501.5, and 34508 CVC.

REFERENCE

This action implements, interprets, or makes specific Sections 34505.1, 34505.6, 34505.7, and 34623 CVC.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
J. B. Rodriguez, Chief
Enforcement and Planning Division